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Office of the Attorney General of the State of Delaware

Attorney General Opinion No. 26-IB52

September 4, 2026

Via Email

Dr. Amy Roe, Vice President
Delaware Coalition for Open Government
amywroe@gmail.com

RE: FOIA Petition Regarding the City of Wilmington

Dear Dr. Roe:

We write in response to your correspondence, on behalf of the Delaware Coalition for Open Government, alleging that the City of Wilmington violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 ("FOIA"). We treat your correspondence as a Petition for a determination pursuant to 29 *Del. C.* § 10005 of whether a violation of FOIA has occurred or is about to occur. For the reasons set forth below, we determine that the City did not violate FOIA by failing to have the FOIA request form published on its website.

Background

On August 4, 2026, you emailed the City of Wilmington's FOIA contact with the police department. You stated that you did not see a FOIA request form on the City's website which would allow you to submit a FOIA request and asked how to access this form. This Petition followed, in which you object to the lack of FOIA request form on the City's website. You assert that a FOIA request form is required so requesting parties can submit a request by U.S. mail, email, or fax. As evidence of your claim, you point to the language in Section 10003(f) stating that requests shall be made in writing by U.S. mail, email, fax, or online and "[c]opies of the FOIA request form may be obtained from the website of any state agency, school district, or other public body."

On August 14, 2026, the City, through its legal counsel, replied to the Petition ("Response"). The City argues that it is fully compliant with FOIA's requirements. The City

states that FOIA imposes mandatory requirements for the City to maintain a web portal for requests and to provide a mailing address for receiving requests through the mail. The City states that requests may be submitted on the request form promulgated by the Office of the Attorney General. The City acknowledges that regardless of the form, the City must respond to all written requests which adequately describe the records. Because the statute's obligations of maintaining a web portal and publishing a mailing address both are imperative, using the term "shall," the City argues that the statement that the form "may be obtained" from the website of any state agency, school district, or public body indicates a permissive use of the term; thus, publishing this form on its website is not part of the City's mandatory requirements. The City also points out that "while FOIA states that the FOIA request form may be obtained from the public body's website, there is no imperative provision requiring the City to do so separately from the online portal the City must provide for receiving requests: "[web] portals shall utilize the standard request form promulgated by the Attorney General.'"¹ The City also maintains that its online portal is compliant, noting it uses language substantially similar to the State's online request portal.

Discussion

Delaware's FOIA law "was enacted to ensure governmental accountability by providing Delaware's citizens access to open meetings and meeting records of governmental or public bodies, as well as access to the public records of those entities."² Section 10003 provides that "FOIA requests shall be made in writing to the public body in person, by U.S. mail, by e-mail, by fax, or online in accordance with the provisions hereunder."³ The statute permits requests to be submitted "using the FOIA Request Form promulgated by the Office of the Attorney General" but notes that "any FOIA request that otherwise conforms with the policy hereunder shall not be denied solely because the request is not on the promulgated form."⁴ "Copies of the FOIA request form may be obtained from the website of any state agency, school district, or other public body."⁵

We agree with the City that the provision allowing copies of the FOIA request form to be obtained from public bodies' websites is not mandatory. FOIA makes it clear that the form of a FOIA request will not be a reason for denial, if the request meets FOIA's requirements. As such, we find that the City did not violate FOIA by failing to post a FOIA request form on its website.

¹ Response.

² *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1004 (Del. 2021).

³ 29 Del. C. § 10003(f)(1).

⁴ *Id.*

⁵ *Id.*

Conclusion

For the foregoing reasons, we conclude that the City did not violate FOIA by failing to have the FOIA request form published on its website.

Very truly yours,

/s/ Dorey L. Cole

Dorey L. Cole
Deputy Attorney General

Approved:

/s/ Patricia A. Davis

Patricia A. Davis
State Solicitor

cc: John D. Hawley, Assistant City Solicitor